



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

On January 6, 2021, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”).

The Tenant attended the hearing with I.X. attending as his translator, and S.M. attending as his advocate. The Landlord attended the hearing as well. All parties in attendance provided a solemn affirmation.

The Tenant advised that the Landlord was served with the Notice of Hearing package by registered mail on or around January 10, 2021 and the Landlord confirmed that he received this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord has been served with the Notice of Hearing package.

Neither party submitted any evidence for consideration on this file.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started approximately five years ago, that rent was currently established at \$1,300.00 per month, and that it was due on the first day of each month. Neither party was sure if a security deposit was paid to the Landlord. A copy of the tenancy agreement was not submitted as documentary evidence.

All parties also agreed that the Notice was served to the Tenant by being posted to the Tenant's door on December 28, 2020. The reasons the Landlord served the Notice are because the "Tenant or a person permitted on the property by the tenant has: significantly interfered with or unreasonably disturbed another occupant or the landlord, seriously jeopardized the health or safety or lawful right of another occupant or the landlord, and/or put the landlord's property at significant risk", because the "Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has or is likely to damage the landlord's property, adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord, and/or jeopardize a lawful right or interest of another occupant or the landlord", and because the "Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park." The Notice indicated that the effective end date of the tenancy was February 1, 2021.

The Landlord advised that the Tenant has caused a significant interference by causing repeated grief to other residents of the property, that he caused property damage by putting knives in doors, that he used a hammer on a door to knock on it, and that he has thrown bottles from his balcony. He stated that the Tenant was aggressive with another resident of the building, that there have been threats of violence, that the residents of the building are scared, and that the police have been called multiple times.

The Tenant, through I.X., advised that he had an altercation with another resident of the building, that he damaged a door on December 28, 2020 with a hammer, that he also put a knife in a door on that same day, and that he would pay for this damage. He acknowledged that he had been aggressive with at least one other resident of the building in the summer of 2020 and had been in at least one physical altercation.

S.M. confirmed that the Tenant had not been served any warning letters for his behaviour and that he has not caused any incidents since being served the Notice. She advised that the Landlord had little knowledge of the alleged incidents, that his testimony is mostly hearsay, and that it is not corroborated with documentary evidence. As the incident which caused the Notice to be served was three months ago, and as there have not been any incidents since, this does not meet the threshold to justify ending the tenancy. As well, the Tenant acknowledged that he would pay for the damage to the door.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Neither party submitted a copy of the Notice for consideration. As I was unable to view the relevant Notice to determine if it complied with Section 52 of the *Act*, in accordance with Rule 3.19 of the Rules of Procedure, I provided direction on requesting late evidence. A copy of the Notice, that is the subject of this dispute, was requested to be provided from both parties as it was essential to the matter at hand. A copy of this Notice was provided by the Tenant after the hearing. The pertinent details and information on the Notice were reviewed during the hearing and all parties agreed to the accuracy of the content contained within.

In considering this matter, I have reviewed the Landlord's Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 52 and I find that it is a valid Notice.

I find it important to note that a Landlord may end a tenancy for cause pursuant to Section 47 of the Act if any of the reasons cited in the Notice are valid. Section 47 of the Act reads in part as follows:

Landlord's notice: cause

47 (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*

- (d) the tenant or a person permitted on the residential property by the tenant has
 - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*
 - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or*
 - (iii) put the landlord's property at significant risk;**
- (e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - (i) has caused or is likely to cause damage to the landlord's property,*
 - (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or*
 - (iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;**
- (f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;*

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. As such, the onus is on the party issuing the Notice to substantiate the validity of the reason for service of the Notice.

With respect to the reasons on the Notice, while the Landlord did not provide any documentary evidence to support why the Notice was served, I find it important to note

that both parties confirmed that the Tenant engaged in aggressive, physical altercations with other residents of the building. Furthermore, the Tenant acknowledged that he took a hammer and a knife to a door and damaged it. When reviewing the undisputed evidence before me, while the Tenant may not have engaged in any incidents since service of the Notice, I do not find that any of these actions are consistent with how a person should behave in a tenancy, regardless of the circumstances. Ultimately, I find that the undisputed testimony is sufficient evidence to justify service of the Notice. As such, I dismiss the Tenant's Application.

Pursuant to Section 55 of the *Act*, I find that the Landlord is entitled to an Order of Possession that takes effect on **April 30, 2021 at 1:00 PM** after service of this Order on the Tenant. The Landlord will be given a formal Order of Possession which must be served on the Tenant. If the Tenant does not vacate the rental unit after service of the Order, the Landlord may enforce this Order in the Supreme Court of British Columbia.

Conclusion

The Tenant's Application is dismissed without leave to reapply and the Landlord is provided with a formal copy of an Order of Possession effective on **April 30, 2021 at 1:00 PM** after service on the Tenant. Should the Tenant or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 5, 2021

Residential Tenancy Branch